

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	: 10/526,551	Confirmation No. : 9231
First Named Inventor	: Lutz ECKSTEIN	
Filed	: August 22, 2003	
TC/A.U.	: 3664	
Examiner	: Jorge O. Perche	
Docket No.	: 095309.55979US	
Title	: Radio-based Hazard Warning Apparatus	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Appellants request review of the final rejection set forth in the Office Action dated August 3, 2010 because Passmann does not expressly or inherently disclose all of the elements of at least independent claims 13 and 25. In particular, Passmann's disclosure of an isolated evaluation of individual alert messages does not anticipate the claimed chronological profile based on repeated relevance measure determinations and Passmann's silence with respect to a message received by a vehicle including information about a hazard and the speed of another vehicle does not expressly or inherently disclose a message with this information.

Processing a Single Message Does Not Disclose Determining a Chronological Profile Based on Repeated Relevance Determinations

As illustrated in Figure 5 of Passmann (reproduced on the lower right), Passmann discloses that alert messages are received by a vehicle from other vehicles, filtered for relevance, and if relevant, an alert message is provided to the vehicle operator.¹ There is no discussion in Passmann that messages are processed in anything other than isolation or that there is anything other than a one-to-one relationship between a received alert message and an alert to the driver. In contrast, claim 25 requires "determining a *chronological* profile of the relevance measure, based on *repeated* relevance measure determinations".²

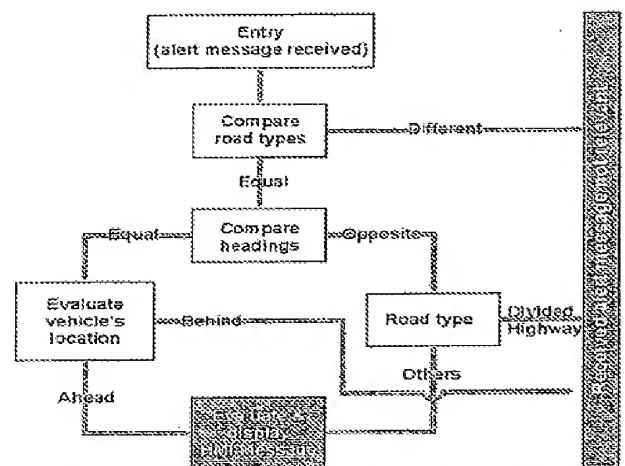


Figure 3. Example of a possible simple flow-diagram for a message filter

¹ See, for example, "Signal Evaluation" section on page 151.

² Emphasis added.

The Response to Arguments section of the final Office Action cites to page 151 and Figures 1-5 of Passmann for the disclosure of

a method for determining the relevance of *the alert message received* (creating a chronological profile of the relevance measure) by (1) comparing the input information with the current own driving situation, (2) checking if the road type the transmitting vehicle is using is the same as the type, and checking if the transmitter is ahead or behind the receiver.³

As discussed in Appellants' Reply to the final Office Action, the claimed "chronological profile of the relevance measure" is determined based on *repeated* relevance measure determinations, whereas Passmann's comparison of a single alert message against input parameters at a *single point in time* is not a repeated determination nor is it a chronological profile. Because there has been no attempt to explain how the receipt of processing of a single alert message involves a chronological profile based on repeated measure determinations, it appears that the rejection has improperly ignored these claim features.

Instead of providing any further explanation to support the rejection or attempting to address Appellants' arguments, the Advisory Action merely states that "Applicants had failed to present a persuasive argument to overcome the Final Office Action. A thought reading of the cited prior art reveals that what is argued is clearly supported." Thus, the record is devoid of any explanation of why Appellants' arguments are not persuasive or what type of thorough reading of Passmann would transform Passmann's disclosure of isolated processing individual alert messages at a single point in time into a repeated determination that is used to generate a chronological profile. As such, there is no evidence in the record that supports the assertion that Passmann determines a chronological profile in the manner required by Appellants' claims.

³ Page 7. (Emphasis added).

Passmann's Silence with Respect to the Transmitted Alert Message Including Information About a Hazard and the Speed of Another Vehicle Does Not Support the Anticipation Rejection of Appellants' Claims that Require This Information

Appellants' claims require that the receiving vehicle receive from another vehicle, *inter alia*, information regarding a hazard and the speed of the other vehicle. As previously discussed, Passmann does not explicitly describe what type of information is included the alert message transmitted to the other vehicle, but does describe that the vehicle receiving an alert message filters based on the following criteria:

1. Road type;
2. Position;
3. Heading; and
4. A couple of other criteria.⁴

Passmann's disclosure of road type, position and heading does not disclose information regarding a hazard or the speed of another vehicle. Additionally, Passmann does not specify what the couple of other criteria include. Thus, there is no express disclosure of information regarding a hazard and the speed of another vehicle.

Accordingly, the validity of the anticipation rejection turns on whether information regarding a hazard and speed of another vehicle is inherent from the disclosure of Passmann. It is not. Inherency "may not be established by probabilities or possibilities"⁵, but instead, inherency requires that "the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.'"⁶ There is nothing in Passmann that makes clear the information regarding a hazard and speed of another vehicle "is necessarily present" in the system of Passmann.

⁴ Passmann at page 151, second column - discussing the filtering criteria.

⁵ M.P.E.P. § 2112 IV, citing *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

⁶ *Id.*

Indeed, it appears that the reasoning to support the rejection is inconsistent with the requirements of a rejection based on inherency. Specifically, the Office Action states that in Passmann the “generated alert message *can* include the vehicle acceleration signal and GPS data.”⁷ What could possibly be included in the message of Passmann is not relevant to an inherency rejection, but instead the relevant analysis is what must necessarily be present from the disclosure of Passmann.

Again, the Advisory Action does not specifically address Appellants’ arguments, but instead merely concludes that “Applicants had failed to present a persuasive argument to overcome the Final Office Action. A thought reading of the cited prior art reveals that what is argued is clearly supported.” As such, there is nothing in the record to support a conclusion that there is either an express or inherent disclosure in Passmann that the transmitted alert message includes information regarding a hazard and the speed of another vehicle.

Finally, the various pieces of information used by a vehicle to determine whether to send an alert message should not be confused with must be included in the message consistent with the disclosure of Passmann. Specifically, Passmann discloses that the determination of whether to generate the alert message is based on information from vehicle systems and sensors, including “warning flasher, acceleration, GPS-position, signals of airbag inflation or anti-blocking-system”.⁸ Passmann does not disclose that all of this information is used for filtering by the vehicle receiving the alert message. Thus, Passmann at best discloses that the transmitted alert message includes the information used for filtering to determine whether to warn a driver, and as previously discussed this filtering is not disclosed as involving information regarding a hazard or the speed of the other vehicle.

⁷ Page 7. (Emphasis added).

⁸ Page 151, first column.

Conclusion

Because Passmann at best discloses isolated processing of individual alert messages, Passmann does not disclose “determining a *chronological* profile of the relevance measure, based on *repeated* relevance measure determinations”.⁹ Additionally, Passmann fails to disclose that the message received by the receiving vehicle includes information about a hazard and the speed of another vehicle. Accordingly, Passman cannot anticipate independent claims 13 and 25.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-0323, Docket No. 095309.55979US.

Respectfully submitted,

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⁹ Emphasis added.